

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

----- X  
JANAE D. BRISSETT,

PLAINTIFF,

-against-

WESTHAB, INC., and YANIS AVILES,

DEFENDANTS  
----- X

**ANSWER**

Index No.: 22-cv-8608

Defendant, WESTHAB, INC. (“Westhab”), by its attorneys, Wilson Elser Moskowitz Edelman & Dicker LLP, as its response to the Complaint of Janae D. Brissett, alleges upon information and belief as follows:

**As to “Preliminary Statement”**

1. Westhab denies the allegations set out in paragraph “1” of the Complaint.
2. Westhab denies the allegations set out in paragraph “2” of the Complaint.
3. Westhab denies that it engaged in any unlawful behavior under either the Executive Law or the Administrative Code in response to the allegations set out in paragraph “3” of the Complaint.

**As to “Jurisdiction and Venue”**

4. Westhab acknowledges the Court’s jurisdiction and otherwise denies engaging in any wrongdoing as its response to the allegations set out in paragraph “4” of the Complaint.

5. Westhab acknowledges that venue is appropriately placed within the Southern District, and otherwise denies engaging in any wrongdoing as its response to the allegations set out in paragraph “5” of the Complaint.

6. Westhab denies the allegations set out in paragraph “6” of the Complaint, except admits that Plaintiff filed a complaint with the New York State Division of Human Rights

(“SDHR”) bearing Case Number 10214133 wherein she alleged race/color, opposed discrimination/retaliation and national origin discrimination.

7. Westhab denies the allegations set out in paragraph “7” of the Complaint, except admits that the SDHR issued a Probable Cause determination holding that issues of material fact warranted a hearing on the issue of whether a race based hostile work environment had been created.

8. Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “8” of the Complaint.

9. Westhab admits the allegations set out in paragraph “9” of the Complaint.

10. Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “10” of the Complaint.

11. Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “11” of the Complaint.

12. Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “12” of the Complaint.

**As to “Parties”**

13. Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “13” of the Complaint.

14. Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “14” of the Complaint.

15. Westhab admits the allegations set out in paragraph “15” of the Complaint.

16. Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “16” of the Complaint, except admits that it employed Plaintiff from October 30, 2017 to January 4, 2022 when she voluntarily resigned.

**As to “Defendant Westhab”**

- 17. Westhab admits the allegations set out in paragraph “17” of the Complaint.
- 18. Westhab admits the allegations set out in paragraph “18” of the Complaint.
- 19. Westhab admits the allegations set out in paragraph “19” of the Complaint.

**As to “Defendant Yanis Aviles”**

- 20. Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “20” of the Complaint.
- 21. Westhab admits the allegations set out in paragraph “21” of the Complaint.
- 22. In response to the allegations set out in paragraph “22” of the Complaint Westhab admits that it employs Defendant Aviles.
- 23. Westhab denies the allegations set out in paragraph “23” of the Complaint.
- 24. Westhab denies the allegations set out in paragraph “24” of the Complaint, except admits that Defendant Aviles was assigned to the 8 Bashford Street, Yonkers, NY site.
- 25. Deny the allegations set out in paragraph “25” of the Complaint, except admit that from February 19, 2021 to July 8, 2021 when transferred to Mayra Garcia, Sr. Retention Specialist. Aviles supervised Plaintiff.
- 26. Deny the allegations set out in paragraph “26” of the Complaint, except admit that from February 19, 2021 to July 8, 2021 Aviles supervised Plaintiff.

**As to “Facts”**

- 27. Westhab admits that it has employed Plaintiff since October 30, 2017 as its response *to* the allegations set out in paragraph “27” of the Complaint.
- 28. Westhab denies the allegations set out in paragraph “28” of the Complaint.
- 29. Westhab admits the allegations set out in paragraph “29” of the Complaint.

**30.** Westhab denies the allegations set out in paragraph “30” of the Complaint, except admit that Plaintiff was initially hired to work in the HITE program.

**31.** Westhab admits the allegations set out in paragraph “31” of the Complaint.

*As to “Race Discrimination”*

**32.** Westhab denies the allegations set out in paragraph “32” of the Complaint.

**33.** Westhab denies the allegations set out in paragraph “33” of the Complaint.

**34.** Westhab denies the allegation set out in paragraph “34” of the Complaint.

**35.** Westhab denies the allegations set out in paragraph “35” of the Complaint.

**36.** Westhab denies the allegations set out in paragraph “36” of the Complaint.

**37.** Westhab denies the allegations set out in paragraph “37” of the Complaint.

**38.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “38” of the Complaint.

**39.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “39” of the Complaint.

**40.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “40” of the Complaint, except admit that some of Westhab’s clients only spoke Spanish.

**41.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “41” of the Complaint.

**42.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “42” of the Complaint.

**43.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “43” of the Complaint.

**44.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “44” of the Complaint.

**45.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “45” of the Complaint.

**46.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “46” of the Complaint.

**47.** Westhab denies the allegations set out in paragraph “47” of the Complaint.

**48.** Westhab denies the allegations set out in paragraph “48” of the Complaint.

**49.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “49” of the Complaint, except admit that Aviles spoke Spanish with other case managers.

**50.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “50” of the Complaint.

**51.** Westhab denies the allegations set out in paragraph “51” of the Complaint.

**52.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “52” of the Complaint.

**53.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “53” of the Complaint.

**54.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “54” of the Complaint.

**55.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “55” of the Complaint.

**56.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “56” of the Complaint.

**57.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “57” of the Complaint.

**58.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “58” of the Complaint.

**59.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “59” of the Complaint.

**60.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “60” of the Complaint.

**61.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “61” of the Complaint.

**62.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “62” of the Complaint.

**63.** Westhab denies the allegations set out in paragraph “63” of the Complaint.

**64.** Westhab denies the allegations set out in paragraph “64” of the Complaint.

**65.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “65” of the Complaint.

**66.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “66” of the Complaint.

**67.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “67” of the Complaint, except denies any case file neglect.

**68.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “68” of the Complaint, except denies any allegation of neglect.

**69.** Westhab denies the allegations set out in paragraph “69” of the Complaint.

**70.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “70” of the Complaint.

**71.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “71” of the Complaint.

**72.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “72” of the Complaint.

**73.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “73” of the Complaint.

**74.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “74” of the Complaint.

**75.** Westhab denies the allegations set out in paragraph “75” of the Complaint.

**76.** Westhab denies the allegations set out in paragraph “76” of the Complaint.

**77.** Westhab denies the allegations set out in paragraph “77” of the Complaint.

**78.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “78” of the Complaint.

**79.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “79” of the Complaint.

**80.** Westhab denies the allegations set out in paragraph “80” of the Complaint.

**81.** Westhab denies the allegations set out in paragraph “81” of the Complaint, except admits that Plaintiff requested to be accompanied to S.A.’s home.

**82.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “82” of the Complaint.

**83.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “83” of the Complaint.

**84.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “84” of the Complaint.

**85.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “85” of the Complaint.

**86.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “86” of the Complaint.

**87.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “87” of the Complaint.

**88.** Westhab denies the allegations set out in paragraph “88” of the Complaint, except admits that by email dated June 1, 2021 Brissett complained about alleged discrimination.

**89.** Westhab admits that on June 1, 2021 Brissett, by email, complained about alleged discrimination as its response to the allegations set out in paragraph “89” of the Complaint.

**90.** Westhab denies the allegation set out in paragraph “90” of the Complaint, except admit that Richard Nightingale, CEO, and Jinja Cuevas, VP HR, immediately responded to Plaintiff’s email and Ms. Cuevas and Lattysa Rivera met with Plaintiff the same day, i.e., on June 1, 2021.

**91.** Westhab admits the allegations set out in paragraph “91” of the Complaint.

**92.** Westhab denies the allegations set out in paragraph “92” of the Complaint, except admits that during this meeting Plaintiff advised it that she was pregnant.

As to “Retaliation”

**93.** Westhab denies the allegations set out in paragraph “93” of the Complaint.

**94.** Westhab denies the allegations set out in paragraph “94” of the Complaint.



**95.** Westhab denies the allegations set out in paragraph “95” of the Complaint.

**96.** Westhab denies the allegations set out in paragraph “96” of the Complaint.

**97.** Westhab denies the allegations set out in paragraph “97” of the Complaint.

**98.** Westhab denies the allegations set out in paragraph “98” of the Complaint.

**99.** Westhab denies the allegations set out in paragraph “99” of the Complaint.

**100.** Westhab denies the allegations set out in paragraph “100” of the Complaint, and avers that Plaintiff was assigned to a different supervisor.

**101.** Westhab denies the allegations set out in paragraph “101” of the Complaint.

**102.** Westhab denies the allegations set out in paragraph “102” of the Complaint.

**103.** Westhab denies the allegation set out in paragraph “103” of the Complaint.

**104.** Westhab denies the allegation set out in paragraph “104” of the Complaint.

**105.** Westhab denies the allegations set out in paragraph “105” of the Complaint.

**106.** Westhab denies the allegations set out in paragraph “106” of the Complaint.

**107.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “107” of the Complaint.

**108.** Westhab denies the allegations set out in paragraph “108” of the Complaint.

**109.** Westhab denies the allegations set out in paragraph “109” of the Complaint.

**110.** Westhab denies the allegations set out in paragraph “110” of the Complaint.

**111.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “111” of the Complaint.

**112.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “112” of the Complaint.

**113.** Westhab denies the allegations set out in paragraph “113” of the Complaint.

**114.** Westhab denies the allegations set out in paragraph “114” of the Complaint.

**115.** Westhab denies the allegations set out in paragraph “115” of the Complaint.

**116.** Westhab denies the allegations set out in paragraph “116” of the Complaint, except admits that Plaintiff was on vacation from August 23, 2021 to September 3, 2021.

**117.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “117” of the Complaint.

**118.** Westhab denies the allegations set out in paragraph “118” of the Complaint.

**119.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “119” of the Complaint.

**120.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “120” of the Complaint.

**121.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “121” of the Complaint.

**122.** Westhab denies the allegations set out in paragraph “122” of the Complaint.

**123.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “123” of the Complaint.

**124.** Westhab denies the allegations set out in paragraph “124” of the Complaint.

**125.** As its response to the allegations set out in paragraph “125 of the Complaint Westhab admits that Ms. Cuevas and Mr. Johnson met with Plaintiff on September 13, 2021.

**126.** Westhab denies the allegations set out in paragraph “126” of the Complaint.

**127.** Westhab denies the allegations set out in paragraph “127” of the Complaint.

**128.** Westhab denies the allegations set out in paragraph “128” of the Complaint, except admits Plaintiff was disciplined for violating Westhab policy.

**129.** Westhab denies knowledge or information sufficient for form a belief as to the truth of the allegations set out in paragraph “129” of the Complaint, except admits that Plaintiff was disciplined for violating Westhab and program requirements.

**130.** Westhab admits the allegations set out in paragraph “130” of the Complaint.

**131.** Westhab denies the allegations set out in paragraph “131” of the Complaint.

**132.** Westhab denies the allegations set out in paragraph “132” of the Complaint.

**133.** Westhab denies the allegations set out in paragraph “133” of the Complaint.

**134.** Westhab denies the allegations set out in paragraph “134” of the Complaint.

**135.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “135” of the Complaint.

**136.** Westhab denies the allegations set out in paragraph “136” of the Complaint

**137.** Westhab denies the allegations set out in paragraph “137” of the Complaint.

**138.** Westhab denies the allegations set out in paragraph “138” of the Complaint.

**139.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “139” of the Complaint.

**140.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “140” of the Complaint.

**141.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “141” of the Complaint, except denies that Plaintiff worked in a discriminatory environment.

*As to “Pregnancy Discrimination”*

**142.** Westhab denies the allegations set out in paragraph “142” of the Complaint, except admits Plaintiff was pregnant.

**143.** Westhab denies the allegations set out in paragraph “143” of the Complaint.

- 144.** Westhab denies the allegations set out in paragraph “144” of the Complaint.
- 145.** Westhab denies the allegations set out in paragraph “145” of the Complaint.
- 146.** Westhab denies the allegations set out in paragraph “146” of the Complaint.
- 147.** Westhab denies the allegations set out in paragraph “147” of the Complaint.
- 148.** Westhab denies the allegations set out in paragraph “148” of the Complaint.
- 149.** Westhab denies the allegations set out in paragraph “149” of the Complaint.
- 150.** Westhab denies the allegations set out in paragraph “150” of the Complaint.
- 151.** Westhab denies the allegations set out in paragraph “151” of the Complaint.
- 152.** Westhab admits the allegation set out in paragraph “152” of the Complaint.
- 153.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “153” of the Complaint.
- 154.** Westhab denies the allegations set out in paragraph “154” of the Complaint.
- 155.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “155” of the Complaint.
- 156.** Westhab denies the allegations set out in paragraph “156” of the Complaint.
- 157.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “157” of the Complaint, except denies that it is common practice to email notice of sick leave.
- 158.** Westhab denies the allegations set out in paragraph “158” of the Complaint, except admits that at some point in November 2021 Ms. Garcia called Plaintiff to inquire as to her whereabouts.
- 159.** Westhab denies the allegations set out in paragraph “159” of the Complaint, except admits that at some point in November 2021 Plaintiff spoke with Ms. Garcia.
- 160.** Westhab denies the allegations set out in paragraph “160” of the Complaint.

**161.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “161” of the Complaint, except admits that Plaintiff submitted doctors’ notes for visits on November 4, 15, and 19, 2021.

**162.** Westhab denies the allegations set out in paragraph “162” of the Complaint.

**163.** Westhab denies the allegations set out in paragraph “163” of the Complaint.

**164.** Westhab denies the allegations set out in paragraph “164” of the Complaint.

**165.** Westhab denies the allegations set out in paragraph “165” of the Complaint.

**166.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “166” of the Complaint.

**167.** Westhab denies the allegations set out in paragraph “167” of the Complaint.

**168.** Westhab denies the allegations set out in paragraph “168” of the Complaint, except admits that that Plaintiff was voluntarily ceased appearing for work on or about November 19, 2021.

**169.** Westhab denies the allegations set out in paragraph “169” of the Complaint, except admits that Plaintiff voluntarily ceased appearing for work on or about November 19, 2021.

**170.** Westhab denies the allegations set out in paragraph “170” of the Complaint

**171.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “171” of the Complaint.

**172.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “172” of the Complaint.

**173.** Westhab denies knowledge or information sufficient to form a belief as to the truth of the allegations set out in paragraph “173” of the Complaint.

**174.** Westhab denies the allegations set out in paragraph “174” of the Complaint.

**175.** Westhab denies the allegations set out in paragraph “175” of the Complaint.

**RESPONSE TO “FIRST CAUSE OF ACTION”  
Against Westhab**

**176.** Westhab repeats each and every response to Paragraphs “1” to “175” as if fully set forth herein as its response to Paragraph “176” of the Complaint.

**177.** Westhab denies the allegations set out in paragraph “177” of the Complaint.

**178.** Westhab denies the allegations set out in paragraph “178” of the Complaint.

**RESPONSE TO “SECOND CAUSE OF ACTION”  
Against Westhab**

**179.** Westhab repeats each and every response to Paragraphs “1” to “178” as if fully set forth herein as its response to Paragraph “179” of the Complaint.

**180.** Westhab denies the allegations set out in paragraph “180” of the Complaint.

**181.** Westhab denies the allegations set out in paragraph “181” of the Complaint.

**RESPONSE TO “THIRD CAUSE OF ACTION”  
Against Westhab**

**182.** Westhab repeats each and every response to Paragraphs “1” to “181” as if fully set forth herein as its response to Paragraph “182” of the Complaint.

**183.** Westhab denies the allegations set out in paragraph “183” of the Complaint.

**184.** Westhab denies the allegations set out in paragraph “184” of the Complaint.

**RESPONSE TO “FOURTH CAUSE OF ACTION”  
Against All Defendants**

**185.** Westhab repeats each and every response to Paragraphs “1” to “184” as if fully set forth herein as its response to Paragraph “185” of the Complaint.

**186.** As Paragraph “186” of the Complaint makes no factual allegations, instead merely purporting to recite the law, no response is required and none is proffered.

**187.** Westhab denies the allegations set out in paragraph “187” of the Complaint.

**188.** Westhab denies the allegations set out in paragraph “188” of the Complaint.

**RESPONSE TO “FIFTH CAUSE OF ACTION”  
Against All Defendants**

**189.** Westhab repeats each and every response to Paragraphs “1” to “188” as if fully set forth herein as its response to Paragraph “189” of the Complaint.

**190.** As Paragraph “190” of the Complaint makes no factual allegations, instead merely purporting to recite the law, no response is required and none is proffered.

**191.** Westhab denies the allegations set out in paragraph “191” of the Complaint.

**192.** Westhab denies the allegations set out in paragraph “192” of the Complaint.

**RESPONSE TO “SIXTH CAUSE OF ACTION”  
Against All Defendants**

**193.** Westhab repeats each and every response to Paragraphs “1” to “192” as if fully set forth herein as its response to Paragraph “193” of the Complaint.

**194.** As Paragraph “194” of the Complaint makes no factual allegations, instead merely purporting to recite the law, no response is required and none is proffered.

**195.** Westhab denies the allegations set out in paragraph “195” of the Complaint.

**196.** Westhab denies the allegations set out in paragraph “196” of the Complaint.

**197.** Westhab denies the allegations set out in paragraph “197” of the Complaint.

**RESPONSE TO “SEVENTH CAUSE OF ACTION”  
Against All Defendants**

**198.** Westhab repeats each and every response to Paragraphs “1” to “197” as if fully set forth herein as its response to Paragraph “198” of the Complaint.

**199.** As Paragraph “199” of the Complaint makes no factual allegations, instead merely purporting to recite the law, no response is required and none is proffered.

**200.** Westhab denies the allegations set out in paragraph “200” of the Complaint.

**201.** Westhab denies the allegations set out in paragraph “201” of the Complaint.

**RESPONSE TO “EIGHTH CAUSE OF ACTION”  
Against All Defendants**

**202.** Westhab repeats each and every response to Paragraphs “1” to “201” as if fully set forth herein as its response to Paragraph “202” of the Complaint.

**203.** As Paragraph “203” of the Complaint makes no factual allegations, instead merely purporting to recite the law, no response is required and none is proffered.

**204.** Westhab denies the allegations set out in paragraph “204” of the Complaint.

**RESPONSE TO “NINTH CAUSE OF ACTION”  
Against All Defendants**

**205.** Westhab repeats each and every response to Paragraphs “1” to “204” as if fully set forth herein as its response to Paragraph “205” of the Complaint.

**206.** As Paragraph “206” of the Complaint makes no factual allegations, instead merely purporting to recite the law, no response is required and none is proffered.

**207.** Westhab denies the allegations set out in paragraph “207” of the Complaint.

**208.** Westhab denies the allegations set out in paragraph “208” of the Complaint.

**209.** Westhab denies the allegations set out in paragraph “209” of the Complaint.

**AS TO “PRAYER FOR RELIEF”**

**210.** Westhab denies that Plaintiff is entitled to any of the damages or relief requested in her “Prayer for Relief” clause.

**GENERAL PROVISIONS**

**211.** Westhab denies each and every allegation not heretofore admitted.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

**212.** Plaintiff’s Complaint fails to state a claim, in whole or in part, upon which relief may be granted and specifically fails to state any legally cognizable discrimination or retaliation



claim against Westhab under any law.

#### **SECOND AFFIRMATIVE DEFENSE**

**213.** Subject to proof through discovery, Plaintiff has failed in whole or in part, to mitigate her purported damages.

#### **THIRD AFFIRMATIVE DEFENSE**

**214.** At all relevant times, Westhab acted in good faith and has not violated any rights that may be secured to Plaintiff under any federal, state or city statute or law.

#### **FOURTH AFFIRMATIVE DEFENSE**

**215.** The Complaint fails to state a claim against Westhab upon which attorneys' fees or costs can be awarded.

#### **FIFTH AFFIRMATIVE DEFENSE**

**216.** Westhab exercised reasonable care to prevent and correct promptly any discriminatory or retaliatory behavior in its workplace and Plaintiff unreasonably failed to avail herself of Westhab's established preventative and corrective procedures.

#### **SIXTH AFFIRMATIVE DEFENSE**

**217.** Westhab did not engage in any conduct that was extreme, malicious or outrageous, nor that was intended to, or recklessly did, wrongfully inflict emotional distress or other damages on Plaintiff.

#### **SEVENTH AFFIRMATIVE DEFENSE**

**218.** Westhab would have taken the same actions regardless of Plaintiff's alleged complaints or disclosures or alleged protected activity or categories.

#### **EIGHTH AFFIRMATIVE DEFENSE**

**219.** At no time did Westhab take any adverse employment actions against Plaintiff, and to the extent any adverse employment actions were taken by Westhab, the Complaint fails to allege that the events and circumstances complained of arose under circumstances giving rise to an inference of discrimination or retaliation.

#### **NINTH AFFIRMATIVE DEFENSE**

**220.** Plaintiff's alleged complaints and disclosures and any other protected status and alleged protected activity were neither determining nor motivating factors in any action taken by Westhab.

#### **TENTH AFFIRMATIVE DEFENSE**

**221.** Plaintiff is not a covered individual under the New York City Human Rights Law because she is not an employee under the law, nor is Westhab an employer under the law because it is not located in the City of New York and Plaintiff never worked for it in the City of New York at any time relevant to the present litigation.

#### **RESERVATION TO AMEND**

**222.** Westhab specifically reserves its right to amend and plead any and all Affirmative Defenses that may become known to it during the course of discovery.

#### **DEFENDANT'S PRAYER FOR RELIEF**

**WHEREFORE** Defendant Westhab respectfully prays that the Court enter judgment as follows:

- i. Dismissing Plaintiff's Complaint in its entirety;
- ii. Granting Defendant's costs and disbursements of defending this action;
- iii. Granting any further or different relief that this Court deems just and equitable.

Dated: New York, New York  
December 27, 2022

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER LLP**

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